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First steps of the Bulgarian Ombudsman

Introduction

Although with a considerable delay, the election of the first Bulgarian ombudsman in April 2005 completed an important part of the process of introducing the ombudsman institution in the country. A civil society driven effort from the very beginning, the establishment of the ombudsman is a result of the effective public-private partnership between governmental institutions and non-governmental organizations. The continuation of this partnership is now among the key preconditions for the successful development and operation of the newly established institution.

The Ombudsman



*Mr. Ginyo Ganev
The first Bulgarian
Ombudsman*

On April 13, 2005, the Bulgarian National Assembly elected the 77-year-old Mr. Ginyo Ganev, at that time an MP from the Coalition for Bulgaria parliamentary group, as the first Bulgarian parliamentary ombudsman.

A well-known public figure, Mr. Ganev was MP in six National Assemblies: including three between 1976 and 1990, Deputy Chair of the Grand National Assembly, which adopted the new Bulgarian Constitution (1990-1991), and the last two (1997-2005), where he was member of the parliamentary group led by the Bulgarian Socialist Party.

The newly elected national ombudsman is a lawyer by background and an expert in constitutional law and issues related to public institutions.

The Election: Procedures and Results

According to the Law on the Ombudsman (in force since January 1, 2004), the parliament should have elected the ombudsman by March 31, 2004. By the end of 2004 two attempts

to elect an ombudsman were made (on May 14 and on October 8) but both of them failed as none of the nominees obtained the required support of more than half of the voting MPs.¹

Unlike the previous two occasions when several candidates were nominated, in April 2005 there was only one nominee. The broad support was secured only after some heavy backstage political bargaining that included agreements on nominations for other key vacant positions in important institutions, such as the Commission for Protection against Discrimination, the National Audit Office or the National Social Security Institute. Thus, a total of 194 MPs (out of 240) took part in the voting, 141 of them voted in support of Mr. Ganev (equal to more than 72% of the votes).

A week after the election of the first national ombudsman the parliament elected, upon the ombudsman's proposal, Mr. Metin Kazak as a deputy ombudsman. Mr. Kazak, a representative of the Movement for Rights and Freedoms (MRF), was head of the cabinet of the Minister without Portfolio responsible for the crisis management policies.

Rules on the Organization and Activities of the Ombudsman

According to the Law on the Ombudsman the ombudsman was obliged to develop and present to the parliament for approval the Rules on the Organization and Activities of the Ombudsman. Upon invitation of the ombudsman members of the CSD Ombudsman Task Force drafted the rules, which were adopted by the National Assembly on May 18, 2005, and came into force on June 3, 2005.²

The Rules on the Organization and Activities of the Ombudsman are aimed to facilitate the operation of the ombudsman office as well as to overcome some of the flaws in the existing legislation. The most important provisions refer to:

- **Key principles of the ombudsman's activities.** These included:
 - impartiality and independence;
 - strengthening the rule of law and justice;
 - a personal assessment of the ombudsman as to whether good governance requirements are met in each particular case.

These principles represent an important component of the ombudsman's legal framework and their absence from the Law on the Ombudsman was considered as one of the shortcomings that needed to be overcome. Such principles were initially formulated in the draft law developed by the CSD Ombudsman Task Force and were strongly advocated for by the CSD experts during the legislative process in the parliament but none of them was included in the adopted law.

¹ The results of the first two unsuccessful elections are analyzed in detail in CSD Policy Brief No.3 (May, 2004) and No.5 (October 2004). The CSD Policy Brief series is available online at <http://www.csd.bg/publications.php?y=&pType=210>.

² The Rules on the Organization and Activities of the Ombudsman were promulgated in State Gazette No.45 of May 31, 2005.

- **Mechanisms for interaction between the ombudsman and other institutions and organizations.** An instrument for collaboration between the ombudsman and the civil society organizations, the policy community and the local public mediators is the establishment of consultative and regional councils. Both councils will include the ombudsman, his/her deputy and members of his/her administration. Members of the consultative councils could be also academics, media representatives, civic organizations, independent consultants, etc. The regional councils will include municipal public mediators, members of the respective municipal councils, representatives of the local media, local civic organizations, etc. The Rules on the Organization and Activities of the Ombudsman also envisage that the national ombudsman shall cooperate with foreign ombudsmen, their associations and other international organizations and shall interact (including by offering methodological assistance) with local public mediators and other similar institutions in the country.
- **Procedures, applied by the ombudsman.** These include rules for accepting and considering complaints, mediation, acting upon the ombudsman's own initiative, making recommendations and proposals (including for improving the work of the public administration or for amending legislation). An explicit provision states that all complaints and signals related to corruption should be dealt with separately due to the specific role the ombudsman could play in the field of anticorruption.
- **Structure and internal organization of the ombudsman's administration.** According to the Rules on the Organization and Activities of the Ombudsman the ombudsman's administrative office shall be headed by a secretary general and shall consist of directorates and divisions.
- **Institutions and activities lying outside the ombudsman's authority.** Such provisions featured in the draft law developed by the CSD experts but did not become part of the adopted Law on the Ombudsman. The importance of outlining the scope of the ombudsman's powers, however, required the inclusion of these provisions in the Rules on the Organization and Activities of the Ombudsman. The institutions, whose operation the ombudsman may not observe include the National Assembly, the President, the Constitutional Court and the Supreme Judicial Council. The activities outside the ombudsman's authority are the exercising of judicial power by the courts, the public prosecution offices and the investigation services as well as the relations pertaining to the field of national security and foreign policy.

Setting up the Office

The adoption of the Rules on the Organization and Activities of the Ombudsman provided the necessary legal basis for the practical establishment of the ombudsman's office. The next steps, some of which are already under way, include:

- finding appropriate premises for placing the ombudsman's headquarters;

- organizing the ombudsman's administration;
- adopting internal acts starting with a detailed regulation of the structure and organization of the institution's administration.

As a follow up to the development of the Rules on the Organization and Activities of the Ombudsman members of the CSD Ombudsman Task Force together with the ombudsman and his deputy have already started elaborating the organizational chart of the future ombudsman's administration.

What is needed now is to speed up the setting up of the ombudsman's office, in particular as regards the finding of appropriate premises which is a precondition that would enable the ombudsman to appoint the necessary administrative personnel and to start effectively performing its activities. The problem needs an urgent solution having in mind that the ombudsman has already started to receive complaints, which are gradually increasing in number, and even launched his first investigation upon his own initiative (regarding a recently occurred crisis with the disposition of waste in the city of Sofia due to a conflict over the garbage dump located next to a village near the capital). Therefore, any further delay with the start of operation of the new institution could result in a decrease of the public confidence in it and have a negative impact on the ombudsman's activities in the future.

The Legal Framework: Opportunities for Further Improvements

Amendments to the Law on the Ombudsman

The current legal framework of the ombudsman reveals a number of flaws, some of which already produced poor results as the parliament failed to elect a national ombudsman on two consecutive occasions. After the establishment of the ombudsman's office other gaps in the legislation could seriously hamper his work, undermine his independence and effectiveness, or prevent the appropriate division of competences and the effective cooperation between the national and local ombudsmen.³

With regard to that, the CSD Ombudsman Task Force will continue to **advocate for improving the legal framework** of the ombudsman institutions on national and local levels. The Task Force will promote constitutional and legislative amendments aimed at enhancing their effectiveness and facilitating the interaction between these institutions. It will also expand its previous recommendations for amending the Law on the Ombudsman and will continue to advocate for their adoption by the next parliament.

Some of the proposed changes have already been discussed with the national ombudsman who expressed his commitment to support them. As a result draft amendments were elaborated with the assistance of the CSD Ombudsman Task Force and submitted to the

³ A detailed commentary on the shortcomings of the Law on the Ombudsman is available online in English at: http://www.anticorruption.bg/ombudsman/eng/legframe_work.htm.

National Assembly. They envisaged the possibility legal persons to address the ombudsman. The lack of such an option is among the most important obstacles to the efficient activity of the ombudsman. However the National Assembly did not manage to adopt the law before the end of its mandate, so it will be a task for the next parliament to improve the legal framework of the ombudsman institution in Bulgaria.

Amendments to the Constitution

A significant prerequisite for establishing a legal framework that provides for an independent and effective ombudsman institution is the inclusion in the Bulgarian Constitution of provisions governing the ombudsman. In Europe most national ombudsmen have their legal grounds set in their national constitutions. In most cases the ombudsman was first envisaged in the constitution. Subsequently, based on the constitutional provisions a special law was adopted to regulate the activities of the institution. However, in some countries, like Poland, the ombudsman was initially introduced by a law and later on respective provisions were included in the constitution.

In the beginning of the process of introducing the ombudsman in Bulgaria CSD experts also recommended the Polish model, i.e. introduction of the institution through an ordinary law followed by amendments to the Constitution at a later stage. The main advantage of such an approach is that it is speedier compared to constitutional amendments, which, especially in Bulgaria, take much more time and efforts.

The delay to the introduction of the ombudsman in Bulgaria and the process of amending the Constitution in view of the country's forthcoming EU membership, however, made it necessary that constitutional amendments referring to the ombudsman be drafted immediately after the passing of the Law on the Ombudsman.

The adoption of the constitutional provisions on the ombudsman would improve the existing legal framework in several ways. For instance, only a constitutional provision could entitle the ombudsman to approach the Constitutional Court or to submit draft laws to the parliament on issues related to the protection of rights and freedoms. Constitutional rules are also needed to envisage greater parliamentary majority for election and removal from office of the ombudsman, thus guaranteeing the independence of the institution (as the three consecutive ombudsman elections showed, the simple majority applied under the current law does not encourage the parliament to search for consensus).

Furthermore, constitutional provisions are recommended to specify the criteria a person should meet to become an ombudsman, the positions and activities that are incompatible with being an ombudsman as well as the relations between the national ombudsman and the local public mediators. Including such provisions in the Constitution would make the legal framework much more stable, preventing frequent amendments to the law that are motivated by political interests.

The CSD Ombudsman Task Force developed a set of draft constitutional amendments referring to the ombudsman institution and presented them to the major stakeholders. However, the two sets of amendments to the Constitution, passed in 2003 and 2005 were

limited only to issues directly bound to Bulgaria's EU accession and therefore did not include the ombudsman institution.

Conclusion

The election of the first Bulgarian ombudsman is a significant step towards strengthening the protection of human rights and improving the work of the public administration. Initiated in the framework of the anti-corruption initiative *Coalition 2000* the ombudsman concept has also a considerable anti-corruption potential. Therefore, it is now a common objective of both, the ombudsman and the civil society, to turn the new institution into a working tool for protecting human rights, countering corruption and promoting good governance.